

**REMARKS**

Applicant has amended the specification herein. The amendments to the specification do not add new matter. Support for the amendments may be found in, for example, originally filed claims 6 and 18. Applicant has also amended claims 1, 15, and 27-29 herein. The amendments to the claims do not add new matter. Support for the amendments may be found in, for example, originally filed claims 5, 8, 17, and 20. Upon entry of the enclosed claim amendments, claims 1-4, 6-7, 9-16, 18-19, and 21-29 remain pending in the present application.

The Applicant traverses all of the objections and rejections of the Office Action. Applicant appreciates the Examiner's review of the above-identified patent application and respectfully requests reconsideration and allowance in view of the above amendments and following remarks.

**I. Response to Claim Objections and Rejection -34 USC § 112**

Applicant has amended the specification to include support for original filed claims 6 and 18. No new matter was added. Support for the amendments may be found in, for example, originally filed claims 6 and 18.

II. Response to Claim Rejections Based on Obviousness

In the Office Action, claims 1-29 have been preliminarily rejected as obvious under 35 U.S.C. § 103. Specifically claims 1, 15, and 27 has been rejected under 35 U.S.C. § 103 by U.S. Patent 4,806,776 to Kley (hereinafter, "Kley") in view of obviousness.

A. Claim 1

The Applicant respectfully submits that the reference Kley fails to disclose, teach, or suggest all of the above-emphasized elements of claim 1. Applicant has amended claim 1 to recite, "illuminating a target with at least **a first visible light spectrum illumination source**" and "illuminating the target with at least **a second ultraviolet illumination source.**" Applicant contends that the arguments presented in the Office Action are no longer applicable to amended claim 1.

Kley does not disclose or suggest using a visible light source and an ultraviolet light source. Kley discloses using images produced by different angles of illumination by different polarities of illumination, different phases of illumination, different colors of illumination or different patterns of

operation of the phase of illumination. Kley does not disclose, teach, or suggests the using a visible illumination source and an ultraviolet illumination source. Kley discloses that different colors of illumination may be used, however, this teaching is limited to different illumination sources within the visible spectrum. Applicant's claimed invention teaches one illumination source in the visible spectrum and the other in the ultraviolet spectrum, outside of the visible spectrum. Kley teaches away from applicant's claimed invention by suggesting both illumination source be within the visible spectrum.

The examination cites to col. 39, lines 21-26 as disclosing a second ultraviolet let source. See discussion of claim 8 on page 4 of the office action dated 10/31/06. The office action incorrectly interprets Kley at col. 39, lines 21-26. Kley is disclosing a bandpass filter for ultraviolet light placed in front of a camera to remove ultraviolet light for cameras sensitive to ultraviolet light in order to prevent unwanted noise. Kley teaches away from applicant's claimed invention by suggesting a desire to remove unwanted ultraviolet light. The cited portion of Kley does not suggest providing an ultraviolet illumination source. An individual skilled in the art at the time of the

invention would not have been motivated by Kley to utilize a visible illumination source and an ultraviolet illumination source to provide images for determining an edge of at least a portion of the target.

The prior Examination misuses the doctrine of official notice makes overly broad assertions throughout the Examination. The Examination seems to attempt to make connections and draw conclusions based on what the Examiner deems to be common knowledge or common sense. Recently, Judge Newman, in her opinion in *In re Lee*, 277 F3d. 1338, 1343, 61 USPQ2d 1430 (Fed Cir. 2002), repeated a fundamental principle that an Examination cannot simply rely upon "common knowledge" or "common sense" (even when couched in term of "Official Notice"):

The "common knowledge and common sense" on which the Board relied in rejecting Lee's application are not the specialized knowledge and expertise contemplated ...The Board's findings must extend to all material facts and must be **documented on the record**, lest the "haze of so-called expertise" acquire insulation from accountability. **"Common knowledge and common sense", even if assumed to derive from the agency's expertise, do not substitute for authority when the law requires**

**authority.** *Id.*

Official Notice is not a citation, and is not a tool of rejection. Rather, Official Notice is a doctrine an Examiner can invoke, *at the request of the Applicant*, to avoid the need to prove-up various matters to which both the Examiner and the Applicant agree are well known. This is not the case here. Thus, the Examination is misusing the doctrine of Official Notice, and any rejections or motivations for combinations based thereon should be withdrawn. Applicant requests that future examination not use official notice and relay on cited authority.

Neither U.S. Patent 3,710,128 to Kubisiak et al., U.S. Patent 5,914,784 to Ausschnitt et al., or other references cited in the office action cure the above deficiencies. Therefore, the rejection of claim 1 should be withdrawn and claim 1 allowed.

B. Claims 15 and 27-29

As previously discussed with regard to amended claim 1, Kley does not disclose, teach, or suggest **a first visible light spectrum illumination source** and **"a second ultraviolet illumination source"** for providing images to determine an edge

of at least a portion of the target. Neither U.S. Patent 3,710,128 to Kubisiak et al., U.S. Patent 5,914,784 to Ausschnitt et al., or other references cited in the office action cure the above deficiencies. Therefore, the rejection of claims 15 and 27-29 should be withdrawn and claims 15 and 27-29 allowed.

C. Claims 2-4, 6-7, 9-14, 16, 18-19, and 21-26

The Applicant respectfully submits that since claims 2-4, 6-7, 9-14, 16, 18-19, and 21-26 depend on independent claims 1 and 15, respectively; claims 2-4, 6-7, 9-14, 16, 18-19, and 21-26 contain all limitations of independent claims 1 and 15, respectively. Since independent claims 1 and 15 should be allowed, as argued herein, pending dependent claims 2-4, 6-7, 9-14, 16, 18-19, and 21-26 should be allowed as a matter of law for at least this reason. In re Fine, 5 U.S.P.Q.2d 1596, 1608 (Fed. Cir. 1988).

III. Prior Art Made of Record

The prior art made of record has been considered, but is not believed to affect the patentability of the presently


pending claims.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and rejections have been traversed, rendered moot and/or accommodated, and that presently pending claims 1-4, 6-7, 9-16, 18-19, and 21-29 are in condition for allowance. Favorable reconsideration and allowance of the present application and the presently pending claims are hereby courteously requested. The examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

Respectfully submitted,

Steven Joseph King

By   
Andrew R. Martin  
Registration No. 45,413  
Attorney for Applicant(s)

BOURQUE & ASSOCIATES, P.A.  
835 Hanover Street, Suite 301

In re: Steven Joseph King  
Filed: February 22, 2002  
Serial No.: 10/081,127  
Page 19

Manchester, New Hampshire 03104

Telephone: (603) 623-5111  
Facsimile: (603) 624-1432

Date: 1/31/00